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BREAK THROUGH

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Winter 1973

Canada's
date
with the
Hangman's
Noose

An Open Forum on Capital Punishment

Sermon
preached by
The Reverend
S. R. Lucyk
Melrose United
Church,
Hamilton,
Ontario
Oct. 15, 1972

The resource group responsible for today's service decided to project the image of a hangman's noose onto the wall beside the pulpit, not to be cute, but to dramatize the fact that the question of retaining or abolishing the death penalty hangs over the heads of Canadians. On December 29th the 5-year trial period for the abolition of the death penalty comes to an end. This means that the Members of Parliament elected in this month's election will be faced with this momentous issue in the House. Hence the capital punishment issue should be a part of the mix for any concerned Christian this round as he or she goes to the polling booth.

I'm sorry in a way that, instead of projecting a noose onto the wall, we didn't move the Communion Table to the front of the Chancel, remove the gilded cross, and in its place set up a model of a gibbet, with a dangling noose—for, after all, that's what the cross was, a hideous, barbaric instrument of capital punishment. And this we often forget—that the Roman equivalent of the gallows or the electric chair is our central Christian symbol. What are the signals for us in taking that hymn, "beneath the cross of Jesus I fain would take my stand", and translating it a little more sharply by saying, "beneath the instrument of capital punishment I fain would take my stand"? Jesus on the cross, Paul by the Roman sword, Peter crucified upside down, Andrew tacked to the cross so that his body formed an X—the cross of St. Andrew—all these men were victims of the State's

utilization of capital punishment. One has to be stupidly insensitive not to realize that capital punishment is an issue written into the core of Christianity.

As the resource group that was so helpful to me indicated, there is so much involved in the whole question that one could go at it for weeks. Hence all I can do in twenty minutes is hint at a limited number of issues.

One thing we should note is that capital punishment raises the wider issue of criminal codes and punishment. What is the purpose of punishment as provided for by a criminal code? The 1963 British Royal Commission on Capital Punishment saw three principle purposes in punishment.

(1)
(a) One is that of reformation or rehabilitation.

Obviously this doesn't apply in a capital punishment case. Pretty hard to rehabilitate someone to whom society has given the "coup de grace" and sent packing six feet underground.

But there is, for the Christian, an interesting illustration on this point from the American scene. Michael John Bell, a convicted murderer in North Carolina, pleaded before the courts that he be released

from the death penalty on the ground that the infliction of such a penalty would violate his religious rights. His faith, he pleaded, requires him to make reparation for his sins, and his execution would interfere with his chance to do so.

(2)
(b) The second purpose of criminal code punishment provisions, said the British commission, is that of retribution—retribution having in it

the elements of vengeance, some kind of atonement for the sin, and a display of public disapproval.

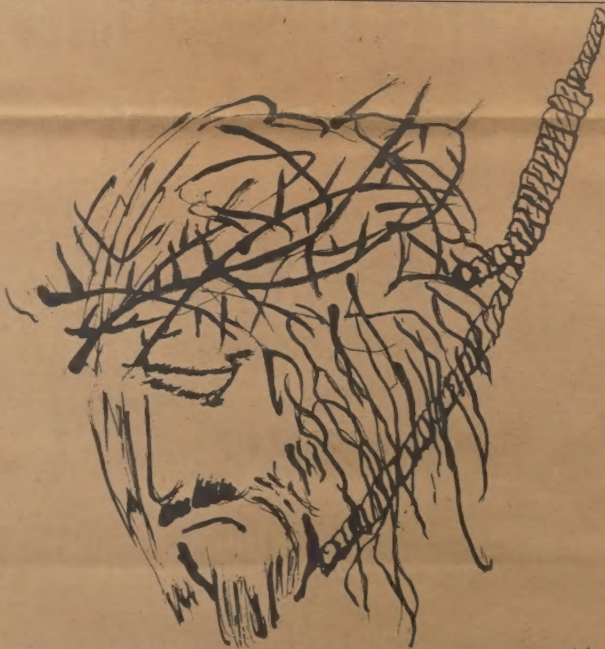
Lord Justice Denning, testifying before the British Commission and arguing for the retention of the death penalty, said:

"The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being deterrent or reformatory or preventative and nothing else."

The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime.

(3)
Punishment, including capital punishment, to put Denning in a less refined way, is society's way of gobbing its spit of disapproval on the perpetrator of a crime.

Retribution has also the element of vengeance. W.M. Thackeray, writing about the time when hangings were public spectacles in Britain, said in part: "Forty thousand persons (say the Sheriffs), of all ranks and degrees, --mechanics, gentlemen, pickpockets, members of both Houses of Parliament, streetwalkers, newspaper-writers, gather together before Newgate at a very early hour; the most parts of them give up their natural quiet night's rest, in order to partake of this hideous debauchery, which is more exciting than sleep, or than wine, or the last new ballet, of any other
(Cont'd on Pg. 2)



Good Friday 1973

K.L.

Canada's date with The Hangman's Noose

(Cont'd from Pg. 1)

amusement they can have. Pickpocket and Peer each are tickled by the sight alike, and has that hidden lust after blood which influences our race."

(4).
Lust after blood! But what's a Christian doing in the vengeance business—we who have the cross as our central symbol and one who is supposed to call the signals for our life hanging on it, crying out, "Father, forgive them, for they know not what they do?" And who's the "they"—those who lay charges and who implement the capital punishment system? Is the *Time* magazine essay right in referring to "the near pathology of latter-day anger", in suggesting that the characteristic mark of our age is "the mask of cracked civility, the furious heart beneath?"

(5).
Rehabilitation and retribution. The third purpose of punishment in the British Commission is that of deterrence or the preventive.

There's a conservative back-lash sweeping the country now—the sort of thing that reflected in the "Spectator's" editorial at the end of August entitled "Getting Away with Murder". (6). Hardly noted for its intellectual liberalism, the *Spec* dismissed what it called "Sentimentalism" and picks up the note peddled by many: "if they know they'll swing, it will make them think twice!" But is that assumption true?

Tom Ireson gave the classic example in how, during the reign of Henry VIII, 72,600 thieves were put to death at public executions to try to deter such crimes. But when the crowds gathered to witness the hangings that were supposed to deter thievery, this was the very time the pickpockets had a heyday.

Warden Clinton Duffly of San Quentin Prison, custodian of one of America's major Death Rows, in his book on the people of Death Row—'88 Men and Two Men—wrote this out of a first-hand experience none of us could deny: "I hate death penalty because it is not the deterrent to crime that its advocates claim...I have yet to meet the man who let the thought of the gas chamber stop him from committing murder."

(7).
There's something more about this argument that the death penalty deters. It follows as logically as night follows day that I don't hear it mooted by those who say capital punishment is a deterrent. The point is put publicly by W.C. Bok, a former justice of the Pennsylvania Supreme Court, in "Star Wormwood":

"It is strange how people talk about deterrence and the death penalty. Great publicity is given to war and its horrors under pious captions that knowledge of its horror may deter the race from future war." (for e.g. the horror shrines marking Auschwitz and Hiroshima).

But no publicity is given to executions, though the argument for deterrence is the same. Why not show executions in motion pictures, television, stage, and

press, so that all may see, if they have such magnificent deterring power? Why is the state so ashamed of its process that it must hide the deed of night in an isolated place, and on an unnamed day?"

(8).
I suggest to those of you who argue that the death penalty is a deterrent, that you should logically argue also for execution scenes being telecast into Grade 3 classrooms so that kids at an impressive, formative age, might be taught early an aversion to any life-style that would merit capital punishment! The fact that the hang house is well hidden out of public view behind the green door at the Barton Street Jail argues that deep down we're really not convinced about this one.

(9).
In its outworking, the function of the law is to use force to protect society. But remember, society and its criminal code is what establish police forces to be the protectors of society. We put the policeman out there on the front line—and very often an abusive front line—in our name. The policeman is us. Now, if the law and its enforcement really is a societal man—what does it say about us? Does the capital punishment law point to sickness in us?

There's the one I alluded to a few minutes ago—the vengeance business. What sort of beast is it that lusts for blood and cries hoarsely: "let them swing!" To me there was something utterly horrifying in Tom Gould's interview with Canada's official hangman where the hangman kept talking about "born bums" and, having posited that, had no qualms about exterminating these so-called "born bums" just as one might exterminate vermin. But to identify the typical murderer with a "born bum" is to fly ignorantly in the face of something both psychiatrist and policeman maintained: that the majority of murderers are ordinary fellows, could be you, could be me, who perpetrate their crimes in moments of passion. (10).

Said Canada's hangman, who also maintained he was deeply a religious man, all he has to do is go on welfare until he can buy a gun, shoot your wife or sister. He doesn't care who. He has nothing to fear. He will be dry and warm and get free cigarettes. Even a pensioner can't get this. To keep a condemned man in a cell costs \$8,000 a year. And with that sort of arch-conservative, welfare-backlash line, Canada's hangman said that the "born bum" should be strung up. Vermin extermination! I suggest to you that a society that buys that sort of line says far more about its own barbarity than it does about the hideousness of any murder's sin.

Tom Gould, in that same interview with Canada's hangman, referred to an assignment he had as a young reporter to witness a hanging at B.C.'s Okalla prison. Gould concluded that capital punishment was "one of the most degrading arts of our society." That can be documented by a man such as Dr. Wm. F. Graves, medical officer at San Quentin's Death Row. He cites the case of Henry Ford McCracken, a man whose

tiny head caused Graves to regard him as a microcephalic:

"During his stay on Death Row, McCracken became no more than a vegetable. On one occasion I found him wallowing on the floor of his cell in his own excreta babbling incoherently. I arranged to have him transferred to the prison hospital where he was given electric shock therapy—this to bring him to a point of sanity at which he might be considered able to understand that he was being punished at the time of his execution."

(11).
Surely it's obvious that there is no white-washing of McCracken's crime implied in raising the further question of what kind of sickness possesses one's society when our structures drive men to wallow in their own excreta? What are we guilty of aiding and abetting and being party to?

Capital punishment says something about us in another way. In "Life and Death in Sing Sing", Sing Sing Warden Lewis Lawes wrote that capital punishment is a punishment that falls most severely on the family of the defendant. The murderer's torment ends eventually, but the wives, mothers, children continue to suffer after the executions. Victor Hugo said in "The Last Days of the Condemned": "The man has a family; and then do you think the fatal stroke wounds him alone—that his father, his mother, or his children will not suffer by it? In killing him, you vitally injure all his family; and thus you punish the innocent (12). What's with us that we punish the innocent in this way?"

(13).
A salient corrective note was fed in by one of the resource group by pointing to a study on violence in the local scene being done by Professor Cyril Greenland of McMaster. There is a danger in so centering in on this area of homicide and capital punishment that we get ourselves off the hook with regard to other areas that should distress and concern us even more, for example, the much more extensive business of mayhem on the roads, of people coming to violent ends because some guy gets tanked up on booze and functions like a zombie behind the wheel of a car.

The question is raised, in terms of the violation of life, whether one can really differentiate a moral difference between the fellow who pulls the trigger and kills, in a moment of passionate rage his wife whom he's found in bed with another man, and the kid who drug races down Garth Street and ends up by bashing some innocent child into a hedge and killing her. Why capital punishment for the one and a different approach to the other? Why upbraid about guys who pack an unregistered firearm but very loose about those stag parties and Christmas boozes sessions that will put all kinds of tanked-up, potentially murderous zombies behind a wheel?

But I suggest that the split-personality nature of our society is even more pronounced. I'm mystified and appalled by the conservative backlash I've been hearing, bolder or more dangerous, arguing quietly

as did Canada's official hangman, for reactivation of the hang house behind the green doors at Barton Street Jail. That on the one hand, and the hue and cry, on the other hand, the strident protest that hit the front pages of this country's newspapers about the terrible brutality of clubbing and skinning baby seals in the Gulf of the St. Lawrence. Me thinks seals mean more to Canadians than the human beings in our midst, who have violated society's accepted norms on the right to life! Are we saying: Let men swing from the scaffold but let's have no inhumane clubbing of litty-bitty baby seals for that would be a crime?

IV.
There are other things I would like to say but let me end with a couple of theological points.

I have no patience with the sloppy theology of the fundamentalists.

Dr. Paul Smith of Toronto's People's Church told his congregation it was all right for society to hang a convicted murderer since the Scriptures approved it. (13). Sure, the Old Testament law, as we saw in today's reading, laid out the death penalty, not only for homicide, but for other assorted tid-bits like idolatry, adultery, homosexuality, witchcraft, swearing at one's parents, kidnapping (ex. 20:12-17; 21:18-20; Lev. 20:10-15) and so on. (14).

So what's the rationale of these fundamentalists? Because it's in the Word of God, are we supposed to kill everyone guilty of adultery or swearing at their parents or going on the astrology jag? It's no news to you that

on that basis, there are all kinds of people here today whom I know would have been long gone to their blessed reward! Surely one of the crucial meanings for the Christian in accepting Christ as Lord is that he becomes Lord over both Old and New Testaments, that his mind and spirit therefore will call into question and put out of business reams of Old Testament regulations and attitudes, that his interpretation of the intent of God has to govern our interpretation of every passage of the Bible. And when Jesus says to the boys who were going to stone the woman with whom one of their male chauvinist crew had gone to bed, "Let him who is without sin among you be the first to throw a stone at her", he was calling the capital punishment structure into question (Jn. 8:1 ff.).

Isn't our whole theological hope, our whole relationship to God, dependent upon God not giving us what we deserve? Long ago the Psalmist articulated the basic cry of anyone of us: "If thou, Lord, shouldst mark iniquities, who could stand?" (130:3). If God doesn't accept the unacceptable, I have no more chance in his presence than a snowball in hell. My only hope, when I finally come to that accounting I sincerely believe we must all face, is that God is merciful—for if my acceptance, with God depends upon my provable goodness, I've had it, just had it. My only plea is that God is good enough not to give up on someone such as I. But if that's the whole basis of our relationship with God, how come we don't transfer it to our relationship with our

fellow men? Why do we give up on the murderer? If we expect God to be merciful, long-suffering and redemptive with us—to accept the unacceptable—what does that say to the Christian about his attitudes to the murderer in his midst?

Let us pray.
Lord, if you should mark iniquities, who can stand? Grant us mercy that we might be merciful in turn. Amen.

Notes:

1. T. Ireson, *The Three Faces of Capital Punishment* (an unpublished essay), p. 5
2. *The Christian Century*, Jan. 1, 1969, p. 31.

3. Quoted in Ireson, *Ibid*

4. W.M. Thackeray, "Going To See A Man Hanged," quoted in G.H. Gottlieb, *Capital Punishment*, p. 7.

5. M. Maddocks, "Look Back On Anger", *Time*, Aug. 16, 1971, p. 36.

6. *The Hamilton "Spectator"*, Aug. 28, 1972

7. C.T. Duffy, *88 Men and 2 Women*, quoted in Gottlieb, *Op. cit.*, p. 11.

8. W.C. Bok, "Star Wormwood", Quoted in Gottlieb, *op. cit.*, p. 7.

9. "Last Scaffold", *Hamilton Spectator*, Oct. 26, 1968.

10. Cf. H. Winhoffen, *The Urge To Punish* (Where New Jersey statistics show 67 percent of murders arise from unpremeditated quarrels with wives, sweethearts or sex rivals).

11. Quoted in Gottlieb, *op. cit.*, p. 9.

12. Quoted in Gottlieb, *op. cit.*, p. 10.

13. J.R. Hord, "You Can Prove Almost Anything From The Bible Including Capital Punishment", p. 1

14. R. de Baux, *Ancient Israel*, vol. 1, pp. 158-159.



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Ron Osmachenko, Gord Vincent, Ken Langley, Keith Fairbank, Earl Henderson

Letters to the Editor

CAPITAL PUNISHMENT

Phyllis Haslam,
Executive Director,
Elizabeth Fry Society
Toronto

There is one aspect of the death penalty which is too frequently overlooked. That is the damage it does to a wide circle of people, many of whom are not themselves related to the person who was murdered nor to the person who committed the murder.

This was vividly portrayed by a young woman who came into the Elizabeth Fry residence from the Metropolitan Toronto Jail the morning after the last hanging took place in that institution. She had been in custody for the first and last time, serving a five day sentence on a drunk charge. During the first night in our residence she woke up, screaming. In her dream she had been re-living the tension and horror which filled the whole jail as staff and inmates alike realized that in that building, that night, two men were going to be put to death, in cold blood. That nightmare re-occurred on many nights, over a number of years and quite probably contributed to the eventual breakdown which made it necessary for the woman to be admitted to a mental hospital.

There is no doubt that those who are involved in the actual hanging are seriously affected. The affect, of course, is directly related to the type of person involved. For those who have a strong tendency toward sadism, there are emotional

satisfactions which intensify the distortion of personality. For those who believe in the sanctity of life and who abhor violence but are required to be a witness to the execution, this must be a traumatic experience which rudely shakes, if not shatters, the person's personal and professional integrity. It is small wonder that reports indicate that many of these people show serious signs of disturbance if not, indeed, of mental breakdown, following a hanging.

Have you ever stopped to think of the impact of a hanging on the family of a person who is to be hanged. The family has already been through the heartbreak of a trial and conviction but now they are faced with the dramatic play-by-play description of the ritual which society makes of an hanging. Can you think what this does to the children of the family. If they are at school, it is probable that other children will constantly remind them of the horror which is affecting their whole family. If equal good was gained by the family of the person who was murdered one might see this as a sort of justice, but such good is not in evidence and the evil consequences of the harm done to the children are only too obvious.

And what affect on the average citizen does a hanging have?

It provides a whipping boy for the guilt which is so much ours. Do we stop to think of the factors which contributed to the making of the person who committed a

murder: what part did poor health, inadequate housing, poverty, loneliness, play? What services as a community did we fail to provide to identify the child with the distorted personality and to give child and adult the help that was needed? or did we say "We can't afford it." Unfortunately, instead of accepting our part of the guilt, we put the blame all on the man we kill. For a few, it may help to provide the incentive to bring about needed changes in our community, in meeting the needs of people. But must we have a hanging to do this!

A hanging lets us know how absurd and dishonest we can become. Can we honestly justify the taking of life as a valid argument against the taking of life? Why do we pretend that a strong argument in favour of capital punishment is to protect society from those who might kill again but, at the same time, see to it that the condemned person has no opportunity to commit suicide. The drunken driver who commits motor manslaughter is a much greater risk to the safety of others than many who commit murder, but do we act as if this were so?

Primarily, hanging lowers the whole moral tone of our society. Violence breeds violence, the disregard for human life makes all life cheaper. As a citizen, I am opposed to murder, whether legal or illegal, and I strongly object to the Government, in my name, taking a life.

The whole moral tone of our society. Violence breeds violence, the disregard for human life makes all life cheaper. As a citizen, I am opposed to murder, whether legal or illegal, and I strongly object to the Government, in my name, taking a life.

includes murderers who commit suicide.

3) Deterrence cannot be effective in the cases where punishment should be avoided. The issue of the death penalty is really one of ethics and morality. The social work profession feels that the worth and dignity of man is cheapened and lessened by state execution. We are in strong support of the abolition of the death penalty. We believe also that there are more important issues than the issue of capital punishment, such as the adequacy of current rehabilitation schemes and the need for effective programs in combating the causes of crime.

Edward J. Pennington,
President,
Ontario Association
of Professional
Social Workers,
Hamilton.



2000 Years of Progress

Retain Capital Punishment

By Gordon Vincent

The Editor,
The Spectator,
King St. E.,
Hamilton, Ontario.

Dear Sir,
Our legislators are facing the decision of whether or not to reinstate Capital Punishment. The Elizabeth Fry Society of Hamilton supports abolition of the death penalty.

Evidence from many countries and recent studies in Canada indicate that the death penalty is not a deterrent to murder. We regard murder as a very serious crime, but believe that alternative methods should be implemented, (i.e. enforced life sentence).

The Elizabeth Fry Society urges that Canada continue to be numbered among the many other nations that have already abolished the death penalty, in some cases for more than a century.

Yours truly,
Lois Wilson,
Public Action Chairman,
Ruth Bruce,
President.

Dear Editor:

The enclosed article is a very short statement on Capital Punishment as requested in your letter of December 28. Since so much has been written on this topic in the past few months, it was felt that a simple statement outlining the views of the St. Leonard's Society of Canada was sufficient at this time. The one major point that has often been neglected in discussion of this topic is the political implications and we have attempted to mention these in the context of this short statement.

We will certainly be very interested in seeing the issue of Break Through once it has been published and you are to be complimented on performing this very useful and needed service at the present time and particularly since it will go to all Members of the House of Commons and Senate.

With kindest regards and all best wishes

Yours sincerely,
(Rev.) T. N. Libby
Executive Director.

WANTED
More Letters
To The Editor

parison to his victim lying lifelessly six feet below the ground.

VENGEANCE

The third commandment reads simply 'Thou shalt not Kill'. Moses was inspired by God to present these rules to his people as they marched out of Egypt on their way to the promise land. Further in the Bible it reads, an eye for an eye, a tooth for a tooth. The Master of Perfection gave us these laws. The same master who gave us all our laws many thousands years ago and never intended for man to change them. God is a vengeful God and for those who talk about vengeance there are many examples.

A prime example is a vengeance of injustice. It is unjustifiable to both parties. Recently I had the occasion to ask a executive director of an after-care agency what he would do if I killed his wife. His immediate reply was he would kill me if he caught me re-hanged. For a man who is advocating against capital punishment on the grounds of vengeance, this reply or his advocating is worthless because of his answer. Killing me personally would be an act of vengeance.

POSSIBLE SOLUTIONS

Though vengeance has a major part to play with the hanging out of the death penalty, it should be retained in certain cases. As a Christian nation we are individually vengeful. We all wish justice to be done whether vengeful or not. But what should be changed is the method that is being dealt with the death penalty. A more humane way of dying should be researched and practiced. Life sentences should be thrown-out and a natural life sentence should be brought into effect. The natural life sentence would keep the man in jail until he dies a natural death, for if there is a doubt the man would not die by penalty then be proven innocent years later. The death penalty should be carried out when there are witnesses to the murder, which would erase any convictions by circumstantial evidence. And anyone convicted on circumstantial evidence should receive the natural life sentence.

Murder frightens me! It's so astonishing, so cold-hearted and perhaps gleefully accepted by 'various' warp-minded people. Is there joy when hearing of a policeman, who is serving and protecting the public, become fatally shot and his loyal wife suddenly becomes a widow... is there warmth when a housewife, mother of three, is stabbed to death by her estranged husband, the youngsters left parentless... is there normalcy when a baby, just brought into the world, is murdered by the mother and bar-b-que'd in the oven then fed to the unsuspecting father.

None of these victims wanted to die, hardly anybody wants to die and yet, it's so disgusting how suddenly a person can pick up a knife, gun or any other lethal weapon to end the life of someone during a moment of rage. But that moment of rage is very insignificant. Very insignificant indeed. Insignificant when a life, significant of being loved by others, of being wanted by others is wiped out in one short moment. That one moment should not mean a thing, especially when a person has had many moments before the incident, to grasp and realize that the penalty for murder is death.

NO REWARD

We should be frightened without the full protection of the law guarding our safety. We could be murdered and possibly we could murder. Personally, I could be your murderer or your victim. What is there to deter you or I from being killers or even killed. Seven to twenty years of imprisonment then release on parole. No. God Damn it! This is no deterrent, its hardly a punishment for anyone who takes the precious valuable life of someone close to them. And its knowing dimly that the murderer will walk the streets within a matter of years, maybe not to kill again but it's in no com-

The report on deterrent effect of hanging

A letter written to The Editor of The Hamilton Spectator

Even hangman have been known to commit murder.

Your main editorial argument for the retention of capital punishment (January 12) seems to be that it acts as a deterrent to the commission of capital offences. Statistics do not support this point of view.

If the states does believe that capital punishment acts as a deterrent and condones it for that reason, then lets have our hangings in the public square, on television, and not held in secret in the middle of the night.

Fattah, "a study of the deterrent effect of capital punishment with special reference to the Canadian situation," prepared for the Department of The Solicitor General, concludes that the effectiveness of capital punishment as a deterrent is so limited that its abolition cannot have any serious effect on the incidence of

murder. He cites the following limits of deterrence:

1) Deterrence is irrelevant in the case of the population who follow the normal norms of society and whose self-concepts will not permit them to commit crimes.

2) Deterrence cannot be effective in the case of certain acts of impulsive nature where high emotions or strong motivations are involved.

3) Deterrence cannot be effective in the case of categories of criminals such as insane, abnormal, impulsive or compulsive offenders or those consciously or unconsciously seeking to be punished.

4) The death penalty cannot be an effective deterrent for those who are not afraid to die or those who have a conscious or unconscious desire to die. This

The Death Penalty in Canada

W. T. McGrath,
Executive Director -
Canadian Criminology &
Corrections Association
Ottawa

I prefer the term "death penalty" to the term "capital punishment" when referring to legal executions. The concept of punishment implies reform: we punish our children to encourage them to do better. Hanging has no such connotation.

THE PRESENT SITUATION

The last execution in Canada was a double hanging in Toronto on December 11, 1962. Since that time, all death sentences have been commuted to life imprisonment by the Cabinet. Five years ago legislation was proclaimed providing for temporary suspension of the death penalty for all murder except that of a policeman or prison officer killed while on duty. During the trial period all death sentences have been commuted, thus making the suspension of executions complete.

The trial period ends December 29, 1972, and at that point the Government of Canada must decide what action to take. Three possibilities are open. The death penalty may be abolished entirely, the range of types of murder punishable by death may be extended, or the trial period of suspension may be extended, perhaps for another year.

In my opinion we in Canada are in no position to reach a decision on this question by December of this year. No thorough study of the situation related to murder has been made available to the Canadian public. The Government commissioned two related studies — one by Dr. Fatih and one by Mr. Grenier — but neither has been released. Statistics Canada is now involved in such a study but their material will not be ready for some months.

Also, no assessment of public opinion has been undertaken and no opportunity has been provided for citizen groups and individuals to express their views.

In my opinion it would be a tragic mistake for the Government to act hastily on this matter. The situation is, of course, aggravated by the forthcoming election. I would, therefore, urge the Government to do two things:

1. Extend the trial period of suspension for one year. This is in line with the recommendation made recently by the Quebec Assembly of Chiefs of Police. I would hope the policy of commuting all death sentences would continue during the extended period.
2. Set up a study group with instructions to gather the needed factual data and to conduct public hearings where citizen groups could express their views.

I hope each of you will ask whatever organizations with which you are associated to press the Government to follow this procedure.

INCIDENCE OF MURDER IN CANADA

In the absence of a most careful and comprehensive study of the applicable statistics, it is impossible to get an accurate picture of the incidence of murder in Canada. To begin with, the

Criminal Code definition of murder has changed three times since 1961. This affects not only the count of murders as such but might well have an effect on decisions by the Crown whether to lay a charge of murder or some lesser charge in a particular case.

Although a full picture of the incidence of murder is not available, it is possible to illustrate some of the difficulties involved. The following table shows the number of murders reported to the police during the four-year period 1966 to 1969 and the outcome up to December 31, 1970 (giving the police and the Crown a full year to get each case settled.) These figures will cast doubt on the feasibility of using the number of murders reported to the police as any kind of measure at all. Of the 1,157 cases reported to the police during this period only 176 resulted in a conviction for murder (9 capital and 167 non-capital). This is only fifteen per cent. It would appear that the great majority of cases of so-called murders reported to the police were not murder at all, and to include them in murder statistics only causes confusion.

TABLE 1

Murders Reported to the Police in Canada for the Years 1966-1969 and Results to December 31, 1970	
Number reported to the police	1,157
Cleared (by charge, suicide, etc.)	1,010
Charged	952
Not sent to trial	198
Sent to trial	754
Found insane	36
Acquitted	121
Awaiting trial	32
Convicted	565
Capital murder	9
Non-capital murder	167
Manslaughter	365
Lesser offence	24
	565

Source: Statistics Canada. Murder Statistics 1970.

If we look at the sentences given those who were convicted of the reduced charge of manslaughter or of a lesser offence, we get a further picture of how serious or trivial the occurrences were that led to the charge of murder, at least in the eyes of the sentencing court. The following table shows that of the 444 individuals convicted of these reduced charges during the five-year period 1966-1970, 4 were fined or placed on probation. You could get that

kind of sentence by playing hockey from school. Another 18 were sentenced to less than one year in prison. You could get that sentence for petty theft. Another 45 were also sentenced to provincial institutions, although the sentence was over a year. One hundred and five received a sentence between two and five years. In only 118 cases out of the 444 did the court see fit to give a sentence of ten years or more.

TABLE 2

Length of Sentence for Persons Convicted of Manslaughter and Lesser Offences upon Reduction of Charge from Murder in Canada, 1966-1970.			
	Manslaughter	Lesser Offences	Total
Suspended Sentence			
Probation and Fine	3	1	4
Under 1 Year	11	7	18
1 and under 2 Years	38	7	45
2 and under 5 Years	102	3	105
5 and under 10 Years	148		148
10 Years and over	116		116
Life	2		2
Indefinite (Juvener)		6	6
TOTALS	420	24	444

Source: Statistics Canada. Murder Statistics 1970.

Another aspect of these statistics has to do with the relationship between the murderer and the victim. The following table shows the percentage of total murders that involved members of the same family (domestic) and the percentage that occurred during the commission of another criminal act, such as rape or robbery.

TABLE 3
Relationship of Murderer to Victim by Percentage, 1966-1970

	Domestic	Commission of Another Criminal Act
1966	45.5	13.2
1967	42.1	15.5
1968	43.0	19.4
1969	38.0	13.1
1970	31.9	19.1

Source: Statistics Canada. Murder Statistics 1970.

No breakdown of relationships is given for the remaining cases but we are told they include the insane, arguments between friends or strangers perhaps following a drinking bout, and professional killings not related to the commission of another criminal act.

In which of these situations is the supposed deterrent effect of the death penalty expected to function?

ARGUMENTS AGAINST THE DEATH PENALTY

There is little room to be original in this debate since the arguments have been presented so frequently. Here are the traditional arguments against the death penalty, stated in capsule form.

1. There is no evidence that the death penalty reduces the incidence of murder through a deterrent effect or in any other way.
2. There is no evidence that the abolition of the death penalty in connection with other crimes has led to an increase in the incidence of those crimes. We must remember that at one time the death penalty was applied to many offences, including petty theft.
3. Retribution is no longer acceptable as the basis of criminal justice. Social science tells us that we are the product of the conditions under which we develop, and if society permits children to grow up under extremely adverse conditions it must share the responsibility if those children later turn to crime. Religion joins with social science on this point. The Christian prays in these words: "Forgive us our trespasses as we

forgive them who trespass against us."

4. Instead of reducing the incidence of murder, the presence of the death penalty tends to strengthen those social factors which lead to violence and killing.

5. Once an execution has taken place nothing can be done to rectify the error if it is later discovered that the executed person was in fact innocent. The recent case of Lucien Roux illustrates the danger. In 1963, Mr. Roux and another young man beat and robbed an old farmer in the Province of Quebec. Some hours later the farmer's home was destroyed by fire and the farmer died in the blaze. There was reason to believe the fire had a criminal origin and Mr. Roux was charged and convicted of capital murder. No doubt the fact that he had taken part in beating and robbing the old man made it easier to believe him guilty of murder as well. Fortunately, his death sentence was commuted. Now, nine years later, it has been established that Mr. Roux was not responsible for the fatal fire and he has been released. DEVELOPMENT IN OTHER COUNTRIES.

On February 18, 1972, the Ontario Supreme Court declared the death penalty to constitute "cruel or unusual punishment" and as such to be prohibited by the California Constitution. The court stated that the death penalty "degrades and dehumanizes all who participate in its processes. It is unnecessary to any legitimate goal of the state and

is incompatible with the dignity of man and the judicial process."

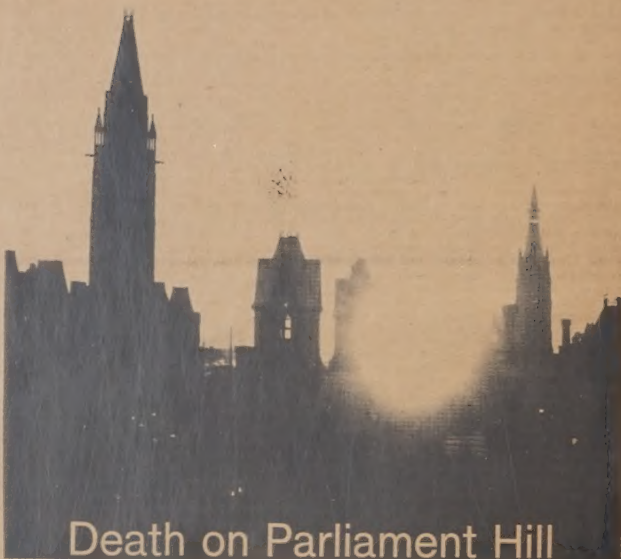
Then, on June 29, 1972, the Supreme Court of the United States declared the death penalty to be "cruel and unusual punishment" and therefore prohibited by the Eighth Amendment to the Constitution of the United States. During the long period of uncertainty while the Supreme Court was debating the matter, all executions were suspended. The last execution in the United States took place on June 2, 1967.

England abolished the death penalty in 1969 following a trial period that began in 1965.

SUMMARY

Hanging in Canada is one of the last vestiges of a violent attitude to criminals that once applied to many crimes and in all countries. There has been a gradual move away from this approach and violent punishment for criminals has now almost disappeared. Torture has been abandoned in all advanced countries. We did away with it in Canada in July of this year when the latest amendments to the Criminal Code were proclaimed. Canada is almost alone in retaining the death penalty, now that the United States and England have abolished it, and even here ten years have passed since the last execution. The time seems ripe to join the rest of the civilized world and to confirm what has become practice.

There has been a subtle shift in the burden of proof in this matter. Until recently, the presence of the death penalty was assumed to be the proper order of things and it was up to those of us who oppose the death penalty to justify our position. That is no longer true. It is now up to those who favour such an extreme step as the reintroduction of executions to establish that such a move would have beneficial results. In the absence of a strong case on their part, the death penalty belongs to the past.



BRIEF BY A.M. KIRKPATRICK

STATEMENT TO THE
JOINT PARLIAMENTARY
COMMITTEE ON CORP-
ORAL AND CAPITAL
PUNISHMENT— OTTAWA,
ONTARIO
A. M. KIRKPATRICK
May 19, 1954

The Members of the Joint
Parliamentary Committee
on Capital and Corporal
Punishment.

Right Honourable and
Honourable Sirs:

In appearing before your
Committee, I must em-
phasize that I do so as a
private citizen and not in my
official capacity as Executive
Director of the John
Howard Society of Ontario.
This Society is a service
rendering group interested
in the welfare of prisoners
and not a pressure group for
the abolition of capital or
corporal punishment, hence
there are represented on our
Boards and Committees
various points of view in
regard to these questions.
The views that I express are
my own and must in no way
be interpreted as reflecting
the position of the Society or
its official Boards and
Committees.

Before discussing directly
the question capital punish-
ment, I ask your indulgence
to make some observations
as to my views on the nature
of crime and the develop-
ment of criminality as a
means of social control. It is
necessary to do this in order
that my views on the major
questions under discussion
may appear in proper per-
spective. These views have
been arrived at not only from
considerable educational
specialization but from a life
time of experience in dealing
professionally with boys,
young men, and men.

NATURE OF CRIME
Crime bears on the citizen
in two main ways. He reads
about it in the present tense
of the daily press in which all
the dramatic values are re-
ported. His reaction is usually
a vicarious sense of
personal injury. More realistically
he or his family may be a
direct casualty of a
criminal act and he reacts
with the full vigour of one
individually attacked in
person or substance and
cries for redress.

These are understandable
reactions and the sordid and
dangerous nature of crime
must not be condoned.
Neither must we minimize
the rights and feelings of the
criminally wronged. We
must, however, establish
some perspective about the
criminal and the criminal
act which is usually in
relation to the past tense as
well as the morning's
headlines.

The criminal act is what
we perceive and punish; but
the crime was not made a
criminal, except in legal
terms, by the commission of
the offence. Though there is
no one causative factor on
which it is safe to generalize,
the developmental history of
the delinquent and criminal
career is usually deeply
rooted in the early years.

Faulty nurture and
training lay the base for dis-
torted adult personalities
unable to cope with the ten-
sions and strains of inter-
personal relationships.
Home and family break-
down, often accompanied by
drunkenness, flagrant im-
morality, desertion by
parents, overcrowding, pov-
erty, high incidence of

sickness, play their part in
fixing warped attitudes
about society. En-
vironmental and group in-
fluences transmit patterns of
anti-social behaviour that
persist in generation after
generation of young people
in the depressed areas of our
communities. Faulty stan-
dards and values result and
are expressed in behaviour
of a hostile and aggressive
nature related to the neigh-
bourhood gang life which has
established such habit pat-
terns in the early years. The
actions of adults speak
louder than words to
children and young people
many of whom are exposed
to the most impoverished of
human values and have for
emulation only the most
unfortunate patterns of
behaviour.

In a recently published
study Sheldon and Eleanor
Glueck write, "Analysis of
the wide variety and the per-
plexing interpenetration of
the factors entering into the
casual process in juvenile
delinquency makes it clear
that the simple nostrum
state, institution, or ad-
ministrative 'set up' can be
expected to prevent or
'cure' the social and anti-
social conduct of youth. ... It
must be recalled that over
half the delinquents in this
research had manifested
serious signs of anti-social
behaviour before the eighth
year of life, and another 40
per cent before the eleventh
year, thus comprising a total
of nine-tenths of the entire
group whose marked diffi-
culties in adjusting to social
demands were already
clearly established before
puberty."

It is by no means sug-
gested that all criminals are
mentally ill. But the concept
of criminality as an end-
product of early developed
personality disorder and
range of the neuroses and
psychoses is becoming
more widely accepted and
understood. It is increas-
ingly recognized that crim-
inal behaviour is symptom-
atic of a disturbed criminal
either using a learned
pattern of behaviour which
has served him in the past or
has regressed to a per-
sonality level which yields
him some protection or
relief from the stresses of
dealing with some pre-
determination of the individual;
but rather with the
destination towards which he
has been directed by the play
of family and social forces
acting upon the individual
organism.

CONCEPT OF PUNISHMENT

Society does not profit by
punishment for punish-
ment's own sake. Whatever
punishment we inflict on the
criminal should be designed
to change him that he may
live acceptably in society.
Rather than make the
punishment merely a type
crime, we need also to make
the punishment attempt to fit
the criminal in relation to the
particular problems of re-
training and re-adjustment
he may present.

It is commonly said that
punishment has three prin-
ciple purposes — retribution,
deterrence and reformation.
Of these it is generally
conceded that retribution
has no longer assumed a
place in modern penology.
But any system of penology
must maintain, as its funda-
mental basis, the protection
of society. The Archambault
Report discusses this matter
in some detail.

"It is a matter of common
knowledge that, in early
days, the punishment of
criminals was a matter of
personal revenge. Later, the
State became responsible for
its administration, and it
was used as a deterrent, and
as atonement to So-
ciety. Now, however, it is
admitted by all the foremost
students of penology that the
revengeful or retributive
character of punishment
should be completely
eliminated, and that the
deterrent effect of punish-
ment alone, while still of
some value to prevent those
who have been arrested from
committing crime, is prac-
tically valueless in so far as
it concerns those who have
been before, or who are now,
confined in prison or peni-
tentiaries. ... Therefore, en-
tirely apart from humani-
tarian grounds and from a
purely economic point of
view, and for the eventual
benefit of society, the task of
the prison should be, not
merely the temporary pro-
tection of society through the
incarceration of captured
offenders, but the trans-
formation of reformable
criminals into law-abiding
citizens, and the prevention
of those who are accidental
or occasional criminals from
becoming habitual of-
fenders."

The great majority of our
citizens are not only law-
abiding in the negative sense
that they would not know-
ingly violate the law; but in a
more positive sense lead
lives which make a con-
tribution to society and
social living above the
requirements of the law.
There has been, however, a
steady increase in con-
viction rates in Canada from
100,000 of population in
1927 to 9,675 per 100,000 of
population in 1951. This in-
crease takes into account our
national population growth
and the increase in the
conditions conducive to
the spread of crime are
gaining ground but also that
our methods of dealing with
the offender are failing to
keep pace with the growth of
the crime.

The offender is not the only
person to be considered. The
fundamental purpose of the
criminal law, which includes
the punishment prescribed
for various offences, is the
protection of the individual
property of the persons
making up our society. The
criminal group must not be
allowed to prey on society
with impunity. At any given
time there are many persons
whose behaviour is not sus-
ceptible to change either
because they themselves are
not able to co-operate in such
a process, because we do not
know enough to help them, or
because we have inadequate
or ineffective facilities to
effect the necessary change.
Such people need to be sepa-
rated from society for their
own protection and that of
other people.

Such separation, involving
deprivation of liberty in
penal institutions, is punish-
ment of a very real nature.
Increasingly the adminis-
trators of penal institu-
tions are recognizing that,
within the bounds of secure
custody, they serve the ends
of justice and society best by
the establishment of
treatment objectives and
programmes. Other than the
maintenance of the sterile
concepts of retributive
punishment inherent in the
legacy of days gone by.
Whatever may be the

effect of punishment as a
deterrent on the criminal
population, the immediate
real question before your
Committee is not "whether"
punishment but "what"
punishment.

The more severe the
prison regime or the specific
punishment, the less effec-
tive it was thought to be.
The fallacy of such a concept
has been exposed by the develop-
ment in the medical and
social sciences of our know-
ledge of human behaviour.
We have today a variety of
methods of inducing change
in human beings. Decreasing
reliance is being based on
fear in this hierarchy of
human motivations.

The United States Air
Force is having remarkable
success in "reclaiming" its
prisoners rather than "dis-
charging" them. "A few
base commanders, air
project marshals, and
confinement officers have
had the notion that their
guardhouse should earn a
certain notoriety for being
"tough". This notion is based
on the theory that "tough"
guardhouses deter potential
offenders from actions which
will land them in the guard-
house. These officers cling
stubbornly to this belief de-
spite the fact that "tough"
guardhouses continue to be
well-populated. "Tough"
treatment of prisoners
impedes any attempt at
reclamation, causing the
prisoners less fit for adjust-
ment to his organization than
before. No less should be the
case in matters of social
policy where the life of the
condemned is at stake.

THE OFFENCE OF MURDER

While it is impossible to
classify the infinite vari-
ations of the human per-
sonality it seems, generally
speaking, that killing is
wrought by four main types
of person — the insane, the
emotionally overwrought,
the natural or induced cause
such as alcohol, the calcu-
lating self-centered egoist,
and the professional robber
or gunman. In the case of
the first two groups the normal
concept of restraint is
absent in the emotional out-
burst which results in death.
The principals in the latter
two groups have no intention
of being caught and match
their planning against the
resources of society at the
disposal of those responsible
for law enforcement.

There are few who argue
capital punishment today on
the basis of a "life for a life."
This is generally agreed to
be an inadequate basis for
punishment. But many of
honest conviction and
purpose argue the deterrent
effect of the death penalty.
How then does deterrence
affect such persons as de-
scribed above?

CAPITAL PUNISHMENT

The foregoing views
regarding the nature of
crime as a developmental
process in human beings and
the concept of punish-
ment as designed to secure
society's protection and the
rehabilitation of the offender
form the basis for the dis-

cussion of capital punish-
ment. There are other alter-
natives available in the form
of life imprisonment for the
punishment of the capital
offender and society would
be better served by the abo-
lition of the death sentence
and the penalty of execution.
Abolition of the death pen-
alty would not reduce murder, but
the evidence is that it will result
in any increase in the taking
of human life.

There is undoubtedly a
sharp division of opinion
among our citizens in regard
to this proposal, but the
question is usually discussed
on an emotional basis which
identifies with the fears of
the community rather than
its conscience. When this
matter is examined ra-
tionally and dispassionately
there are few who do not
agree that the death penalty
should be progressively
abolished and that this will
come in due course.

By the very nature of this
disunity about the penalty of
death it would seem that the
onus of proof should be on
those who believe in its
retention to establish the
case for its continuance and
to justify its retention. It
seems an appalling travesty
of human logic that ex-
ecutions should be con-
tinued and persons deprived
of life when there is so much
disagreement in the elec-
torate as to the value ac-
cruing to society. In law it is
the right of the accused to
receive the benefit of all
evidence. No less should be
the case in matters of social
policy where the life of the
condemned is at stake.

THE OFFENCE OF MURDER

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ations of the human per-
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be an inadequate basis for
punishment. But many of
honest conviction and
purpose argue the deterrent
effect of the death penalty.
How then does deterrence
affect such persons as de-
scribed above?

Those in the grip of insane or

overwhelming emotions are
not deterred by rational con-
siderations from attacking
the frustrating object on
which their rage is focused
and in any event are given
the protection of the law
relating to insanity and man-
slaughter. The calculating,
premeditated murderer,
seeking to remove another
human being who is thir-
sling the gratification of
desire or ambition, is so self-
centered in his egotism that
he believes he can devise the
"perfect crime" and find
little in universal human
experience to deter him. The
professional robber or
gunman uses the threat of
death as a means of securing
his ends and killing is in-
cidental to his main objective.
He assumes the risk of trial
for murder when he takes his
gun in hand. Having once
killed and being liable for
arrest and execution there is
little to deter him from de-
scend upon another victim.
murder. This is a factor
which should be of interest to
our police forces who have
the dangerous task of appre-
hending such men. He can
only hang once.

The following is a com-
mentary on the deterrent
effect of the death penalty.
"In brief, people are
believed to refrain from
crime because they fear
punishment. Since people
fear death more than
anything else, the death
penalty is the most effective
deterrent, so runs the
argument. It is further
argued that the effective-
ness of the death penalty as a
deterrent depends both on its
certain application and on
knowledge of this fact in the
population; hence, the
argument continues, regular
use of the death penalty in-
creases its deterrent value.
...Involved in the deterrence
argument is the assumption
that men deliberately choose
among rival courses of
action, and that they are
free to choose. The basic
criterion of choice being
personal gratification. This
psychological hedonism,
needless to say, is not in
accord with modern psy-
chology and sociology, which
see human behaviour as
largely unplanned and
habitual, rather than cal-
culated and voluntary. The
belief in the deterrent value
of the death penalty is thus
seen not as a scientific pro-
position, but rather as a
social conviction widely used
to justify and reinforce ex-
isting ways of treatment that
perhaps rest mainly on
feeling and tradition."

Frequently comparisons
are made with other coun-
tries where there is no death
penalty in force. Such com-
parison of criminal statis-
tics, not only between
countries, but even between
regions, is misleading.

Cont'd on pg. 8

Quote by Winston Churchill

"The Mood and Temper
of the public with regard to
the treatment of crime and
criminals is one of the most
unfailing tests of the civiliza-
tion of any country. A calm
dispassionate recognition
of the rights of the
accused, and even of the con-
victed criminal against the
state, a constant heart-
searching by all charged
with the duty of punishment,

A desire and an eagerness to
rehabilitate... tireless
efforts toward the discovery
of creative and regenerative
processes, unfailing faith
that there is a treasure, if
you can only find it, in the
heart of every man. These
are the symbols which...
mark and measure the
progress of a nation...
nation... proof of the living
virtue in it."

Capital Punishment and The Scriptures

Austin H. Stouffer

"There was deep concern and emotion in my friend's eyes as he asked me, 'How can you call yourself a Christian and believe in Capital Punishment?'" The conference had been tiring, and my flight back to Thunder Bay was beckoning, so there was no time for a proper defense. No time to explain that I am one of that peculiar minority who openly calls himself a follower of Christ, one who does his listening best to follow the teachings of His Word -- and one who believes the Bible condones the selective use of capital punishment, or the death penalty, or whatever inadequate label you wish.

I believe that the Scriptures teach that society has a responsibility to protect itself from that which would tear it down through violence and lawlessness. That society has a right to impose retributive punishment on the offender. But I also believe that Scripture explicitly instructs the individual of that society to be loving and forgiving towards his fellow man, and that one belief need not conflict with the other.

Surprised? Yes, many people are -- especially when all of our major denominations have renounced the death penalty as being barbarous, inhuman and un-Christian. No abolitionist campaigner since has worried it more forcefully than that pioneer, Robert Bickerdike, who, before the turn of the century, told the Quebec legislature, "...capital punishment is essentially murder, a blot on Christianity, a blight on religion, and a reproach to any nation..."

Although I admire this great political activist for his convictions -- as I do his modern-day counterparts -- I cannot reconcile his views with Scripture. There is some later for me to speak as a social-worker (which I am) but permit me first to raise some theological issues.

Those oft-criticized defenders of the Faith, who fall into the general category of Fundamentalists, would direct one's attention to the thoughts of Moses, who is usually held responsible under God for the Pentateuch, that somewhat barbarous Criminal Code of Israel. Just pages into the Old Testament, Moses quotes none other than the Lawgiver Himself as talking to Noah: "Who so Sheddeth man's blood, by man shall his blood be shed." (Genesis 9:6). Modern enlightenment and personal interpretation to the contrary, the statement leaves little room for discussion.

...cries the Emergent, "Christ did not sanction the barbarousness of the Law, which even permitted a son to be hanged for rebelling against his parents!" Agreed. Yet, one must recall the close-knit Hebrew family unit, peculiarly separated unto God; and realize that the son in question had continuously rebelled, had been punished countless times, but to no avail. In the Hebrew economy, this last resort measure was permitted for one purpose; "...so that thou put away evil

from among you" (Deuteronomy 21:21)

God forbid that we should advocate such wholesale use of the death penalty today. But may the underlying message of the Old Testament teach us something; there is a time and place for society to override individual rights, and to implement what measures are necessary to effectively deter increasing lawlessness, be it joy-riding, malicious damage or murder.

"Oh yes," you say, "I agree that we must have justice. But Christ sought love and forgiveness. He never spoke of punishment or retribution and certainly would not permit death. Would not thorn taken in adultery? By the Law she should have died, but Christ forgave her!"

Not so. First of all, Christ did not forgive her; he simply did not condemn her (John 8:11) and for a very good reason. Under his accusing finger, there was nothing to forgive, for there were none to convict her. If the woman was worthy of death, so were the Scribes and Pharisees. The story does not denounce capital punishment; rather it points out the weakened moral power -- even the religious leaders of that society. Shades of the seventies; deviance had become the norm.

There is no one instance where Christ was directly involved in capital punishment. On that darkest hour of Christianity, the crucified Christ was flanked by two malefactors; one of whom was well aware of his guilt and reasoned, "We receive the due reward of our deeds; but this man (Christ) hath done us nothing amiss." (Luke 23:41)

I find it most interesting that a miracle-performing Christ did not seize upon the political opportunism of the occasion to denounce crucifixion as cruel, barbarous, inhumane and un-Christian, and recruit some legions of angels to rescue His prisoner. He said nothing agonizing death -- even if He Himself must fulfill His predestined mission. Rather, he simultaneously condoned society for taking the man's life -- and FORGAVE him, assuring him a place in paradise.

The observant reader will observe that thus far I have not said I believe in capital punishment. I have merely suggested, rather strongly, that Christ and Scripture condoned its selective use in that day. The theologian is left with the eternal dilemma: how does one apply first-century practices to twentieth-century problems? Perhaps the writings of that most prolific apostle can assist us.

St. Paul's letters urge us to forgive one another as individuals but also urge society to protect itself by meting out penalties sufficient to deter lawlessness.

"For government, a terror to crime, has no terrors for good behavior," says Paul. He speaks of authorities as "Gods agents of punishment, for the sake of the offender." (Romans 13:1-4) How unique, that the tran-

slation of the New English Bible chose the words "punishment" and "retribution" -- both concepts denounce today's emergent social workers.

I concede that the death penalty is not "punishment", for it cannot offer the offender change or rehabilitation -- which in the majority of cases ought to be society's goal. But the death penalty is one form of "retribution". Surely this word carries the thought of recompense, or as Webster states, "giving an equivalent for". I can think of no form of present punishment that is equivalent to taking a person's life.

Having been a social worker in the correctional field for the past six years, I have come to be good friends with many who have taken the lives of others. The manslaughter case with extenuating circumstances, the drunken driver who causes someone to die, the mentally insane who is unaware of what he has done -- all can benefit from effective rehabilitation.

But how can a few years' imprisonment "give an equivalent for" cold, calculated, brutal murder? ...for the unrecognized pain of a little girl after a drunken assault? ...for the widowed pensioner, beaten and raped for the meagre funds in her purse? How does society "give an equivalent for" the client who told me, "If you had to live with her, you'd have killed her too" or the one that blandly stated "I figured it out -- it was worth four years of my life to know that when I came out she won't be around."

Would to God that capital punishment need never be exacted again. Would to God that man in his ever-increasing wisdom (?) could devise an effective alternative to the penalty of death. But until he does, and until it is proven effective -- we as Canadians may do well to permit the possibility of capital punishment to remain on our statute books.

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As the time approaches when the government must make a decision as to whether or not capital punishment should be reinstated as appropriate penalty for murder, the subject has become one of renewed interest and debate. A Gallup Poll conducted last year reported that nearly two out of three adult Canadians are in favour of having the death penalty for murder reinstated when the five-year trial suspension period ends this year.

Often the arguments both for and against the reinstatement of the death penalty are hopelessly confused as a result of individuals getting caught in the quagmire of failing to distinguish among the frames of reference of the protection of society, the deterrence of would-be murderers, and retribution or punishment of those who have committed murder. The perspectives which argue in terms of the protection of society and deterrence require that we examine empirical data while those who argue in terms of just punishment or retribution are fundamentally asking moral questions.

While we may find that, in the final analysis, most of those who are in favour of the reinstatement of the death penalty in Canada base their beliefs on their perception of the moral issues involved, most of the arguments given in favour of reinstatement are empirical ones which ignore existing evidence. Typical of these arguments are such statements as "The murder rate has been on the increase since the abolition of the death penalty as a deterrent" and "If we sentence them to life imprisonment they'll only be paroled to kill again."

The fact is that the murder rate has risen during the period of time that the use of

the death penalty has been suspended. This, however, does not necessarily mean that the threat of the death penalty deters would-be murderers. The number of murders committed each year is so small that the increase is not significant particularly when one considers the fact that the overall crime rate in Canada has increased almost as greatly during this period of time as has the murder rate. Most statisticians will acknowledge the fact that five years is simply too short a period of time to determine whether or not the increase in the murder rate is significant. As well, the increase in the sophistication of investigative techniques may result in an increase in the murder rate as deaths which would have previously been classified as accidents or suicides are discovered to be homicides.

A crucial question which we are not in a position to answer is whether or not the murder rate would have increased during this same period of suspension if capital punishment had been in use. However, there is ample data from jurisdictions outside of Canada which clearly demonstrate that there is no consistent relationship between the threat of capital punishment and changes in the murder rate even when we control for the degree of capital punishment that is to be executed. The fact that there is no causal relationship between the use of the death penalty and murder rates -- which is to say that capital punishment is not a deterrent -- can best be explained by analyzing the act of murder. The vast majority of murders are crimes of passion. In general, better than 50 per cent of murders for which the death penalty are and are linked to petty quarrels, marital discord or sexual disputes -- in fact, it has been estimated that approximately 30 per cent of all murders are victim-premeditated. In other words, the vast majority of the murders either

the murderer or the victim has been drinking. When one is in such an emotional state that murder results, it is highly unlikely that the primitive consequences of one's act will be given much rational consideration.

In the case of premeditated murder, anyone who is not totally insane will carry out the act in such a way as to avoid any punitive consequences whether the consequences be life imprisonment or death.

Certainly, most people are concerned about deterring the would-be killer of a police officer. The best study of the deterrent effect of capital punishment in respect to the police is extra measure of protection. A partial explanation for this fact resides in the knowledge that in Canada the vast majority of police officers are murdered while investigating family disputes.

Some analysts have gone so far as to suggest that the use of the death penalty for murder may actually encourage some individuals with suicidal tendencies to commit murder as well as provide a few other individuals with the rationalization that since the law condones so-called "legal murder," murder can be justified in some instances.

What of the convicted murderer who is released on parole? First, the National Board exercises extreme caution in considering the parole of anyone who has been convicted of murder. Second, the recidivism rate for paroled murderers is extremely low. The Western world is approximately one per cent. This means that one per cent of paroled murderers have been convicted of another criminal offence (not necessarily murder) after their release on parole. The instances where a paroled murderer commits the act of murder again are exceedingly rare.

Twenty years ago, Karl Schuessler in summarizing his classic study entitled "The Deterrent Influence of the Death Penalty," stated that "...statistical findings and case studies converge to disprove the claim that the death penalty has a deterrent effect on the crime rate. The belief in the death penalty as a deterrent is repudiated by statistical studies, since they consistently demonstrate the differences in homicide rates in no way correlated with the special deterrence in the use of the death penalty. Case studies consistently reveal that the murderer seldom considers the possible consequences of his action, and, if he does, he is not deterred by the death penalty. The fact that men continue to argue in favor of the death penalty on deterrence grounds may only demonstrate man's ability to confuse traditional evidence and his related ability to justify his established way of behaving." In the twenty years which has elapsed since the writing of those words, some things apparently have not changed.

Article by Rev. T.N. Libby

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Over the past few years a great deal has been said and written about Capital Punishment. The same old arguments brought up by both the retentionists and the abolitionists, usually based on emotion, appealing to people on a "hawkish-dovish" conceptual base.

Unfortunately the whole issue of Capital Punishment becomes involved in the political arena and since it is based on a free vote in the House of Commons, it tends to be more political than other issues. For instance, the whole issue of abortion was not presented on a free vote basis and usual party discipline applied. It would seem to me that if a free vote is allowed on Capital Punishment, it should be allowed on any other emotional issue that is presented before the

House. To single out a single issue seems rather ridiculous and it would be preferable to have Capital Punishment decided in the House of Commons on the same basis as other issues are decided. A free vote of all or none would make more sense.

From all the reports and studies that I have read, I cannot find a single shred of evidence that shows Capital Punishment as a deterrent. On the other hand, since release of murderers from prisons in Canada are now in the political arena, it would appear that release should be placed on a sounder basis than pure politics. Some people need to be detained for life away from the community and this may apply as well to groups of people other than murderers.

The difficulty arises as to who will make the judgement and on what basis the judgement will be made, but this is something that must be worked out before a sound philosophy on the

handling of murderers can become a reality.

To extend the partial abolition period at this time is simply furthering the political aspects of the whole argument. My theory is that the outcome of the House of Commons on Capital Punishment, to work out a sound base on which inmates can be assessed and released from institutions and to get rid of, once and for all, an outdated and outmoded concept of handling murderers. We are the last progressive country in the world which retains Capital Punishment and I would like to see it abolished completely in Canadian Justice.

The St. Leonard's Society of Canada at its regular quarterly meeting held in London, Ontario on November 25, 1972, passed the following resolution:

"That a formal stand be taken against Capital Punishment and that this stand be communicated to the Prime Minister, the Solicitor General and the Minister of Justice."

The Globe & Mail
Saturday, Jan. 6, 1973

The deterrent nature of capital punishment is examined in depth in the document recently issued by our federal

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A.M. Kirkpatrick

(Con'd from Pg. 5)

jurisdictions in the same country, is subject to a high degree of weighting and is consequently in valid if used in direct correlation. The point of crime, including murder, and the statistical record of its enforcement are different countries and are determined by the social and economic climate of the people, their respect for the law, their respect for the police, their religious and moral attitudes, and the value they place on property and human life. These are the effective deterrent, to the taking of human life.

Without making comparisons the experience of certain States in the United States and that of New Zealand and Australia is presented by the British Royal Commission. It agrees with professor Sellin that the only conclusion which can be drawn from the figures is that there is no clear evidence of any influence of the death penalty on homicide in these States and that, "whether the death penalty is used or not and whether executions are frequent, or not, both death-penalty States and abolition States show rates which are roughly the same." Rates are conditioned by other factors than the death penalty.

"There is some evidence that abolition may be followed for a short time by an increase in homicide and crimes of violence, and a fortiori it might be thought likely that a temporary increase of this kind would occur if capital punishment were abolished in a country where it was not previously in abeyance but was regularly applied in practice; but it would appear that, as soon as a country has become accustomed to the new form of extreme penalty, abolition will not in the long run lead to an increase in crime. The general conclusion which there have reached is that there is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction had led to a fall."

We recognize that it is impossible to draw confidently at firm conclusions about the deterrent effect of the death penalty, or indeed of any form of punishment. The general conclusion which we reach, after careful review of all the evidence we have been able to obtain as to the deterrent effect of capital punishment, may be stated as follows: Prima facie the penalty of death is likely to have a deterrent effect on the tendency to normal human beings than any other form of punishment, and there is some evidence (though no convincing statistical evidence) that this is in fact so. This effect does not operate universally or uniformly, and there are many offenders on whom it is limited and may often be negligible. It is accordingly important to view this question in a just perspective and not to base a penal policy in relation to murder on exaggerated estimates of the uniquely deterrent force of the death penalty."

The effectiveness of the death penalty as a means of controlling the incidence of murder appears to have been popularly over-rated. "As a matter of fact, it seems clear that the

presence or absence of the death penalty makes no particular difference in the amount of murder in any given State, but it is closely parallel to that of adjoining States, where conditions of life and social-cultural attitudes are similar."

The possibility of a middle ground of justice is inherent in any system of justice under law. We have the greatest respect for our judicial system, the members of the judiciary, and the wisdom and honesty of juries. But there have been cases even in recent years where offenders have been sentenced and later cleared of implication in the crime.

Last year in the Christie case in Great Britain grave doubts were cast on the public mind as to the innocence of Timothy Evans who had been already hanged. After serving nineteen years of a life sentence for murder in Mile End, Leonard Hankins was last year cleared of the charge and released. This indicates the possibility of error which is unacceptable when dealing with the death penalty. The question is too delicate. There is no possibility of exoneration and restoration to society when death has terminated the drama.

And it is a drama it becomes for a people the most absorbing tragedy in modern life to follow the trial of a person accused of murder and in jeopardy of death. Public interest in an almost prurient nature heights and under the influence of the modern media of mass communication. There seems to be released among us a perverted curiosity verging on mass sadism which crowds the place of execution. Unhappy and unpleasant emotions are stirred in most of us.

Juries have the privilege of reducing the charge from murder to manslaughter or cases where under the law there are mitigating circumstances. Increasingly it seems evident that juries are reluctant to convict when the death penalty is at stake. Hence it appears to be the very absence of any apparent mitigations or where the circumstances of the crime have been particularly heinous or perverted that juries convict.

The infamous or vicious nature of the crime, of defending against human decency, makes it possible for their conscience to be eased in the passing of a verdict of guilty. Again we question whether the punishment of the death of a victim or perhaps because of the disturbed, abnormal personality of the accused. As with corporal punishment and the lash it seems to be the very absence of viciousness in the crime which ultimately secures for the accused the penalty of death. But these are the very factors which cry aloud the abnormality of the accused and mark his place as a deviant. The degree of apparent legal responsibility.

Examination of the time served in Canada by persons given life sentence shows that the total number of persons released on "Ticket of Leave" in 1931 was eight. Seven of these had been imprisoned for the offence of murder and one for rape. The shortest length of time served was eight years and five months while the longest

time served was twenty-seven years and three months. The average length of time served by this group was fourteen years and eight months. The tremendous motivation aroused in prison by the possibility of parole is often unrecognized by society as a whole. A study of the success or failure of murderers now on Ticket of Leave would be illuminating if made by the Department of Justice and submitted to society.

Murderers are usually one crime offenders. It is believed their record on parole would be found to be good. Support for this belief is given by Paul W. Tappan, Ph.D., who writes: "Sex offenders have one of the lowest rates as 'repeaters' of all types of crime. Among serious crimes homicide alone has a lower rate of recidivism. From an extensive study by Lloyd E. Ohlin, Director of Chicago we reproduce the following table. This indicates a violation rate of persons paroled from a sentence of homicide or assault of only

13.5 which again supports the view that a considerable number of murderers are first offenders and not people of criminal tendencies."

Few could read the description of a hanging given by the Honourable Justice McMurtry, of the Supreme Court of Canada, East, Mr. Harold E. Winch, as reported in Hansard of January 12, 1954 at Page 1033, without deep emotion and stirring of conscience. Should the judgment of your committee be that the death penalty may not be abolished alternate methods of execution should be investigated and expert medical testimony should be secured on this question. The Bureau of Prisons of the United States Department of Justice reports that only three of the 62 executions in 1953 were carried out by hanging - one in Maryland and two in the United States. Twenty-one were by lethal gas and thirty-eight by electrocution.

To move from research and the knowledge of the social and medical sciences to social policy and socio-

"To Hang or not to Hang"

Brian L. Menzies

Will we ever REALLY answer that question? I think that it is about time we did, and that the answer should be "yes" and rather frustratingly so. This indicates a violation rate of persons paroled from a sentence of homicide or assault of only

Granted, it is not a simple issue. As Guy Favreau would have it in "Capital Punishment," there are sixty-five arguments for and eighty-seven arguments against capital punishment. Or is it the other way around? It might be wiser to settle the whole matter by sheer volume of arguments for or against, but somehow I don't think so.

Nor can it be solved by the sheer volume of "emotional" display that often accompanies discussion about the individual. Discourse becomes too passionate when it ends up in name-calling by the abolitionist and the retentionist. Undoubtedly, identifying someone as a "sadist" or a "misguided do-gooder" may be emotionally satisfying, but it solves nothing.

Frankly, I make no pretense of where I stand and that is for the complete abolition of the death penalty for all offences. This is no surprise, I suppose, since I am a social worker with a correctional agency.

Now, granted my own personal and professional value system does much to explain my position. Frankly, I am more than that. Let me expand.

First of all, it should be clearly understood that a society's first concern is its own protection. Criminal justice systems are many institutions designed to ensure this. As in other western nations, Canada's code chooses punishment as the basic method. Through punishment we hope to gain revenge on the offender, to frighten him and others from repeating the offence, and to reform him. As the ultimate in penalties, capital punishment is chiefly concerned with deterrence and retribution as reformation obviously cannot be achieved through extermination.

The question then raises itself: does the death penalty offer the best protection through deterrence? Those who think that it does argue that people who commit murder or other similarly heinous offences are too dangerous to be kept alive; they

will either be a continual threat to the life and limb of fellow prisoners or prison staff, or they will escape again if allowed to remain in society. This involves the notion of individual deterrence. A related, though distinct, argument involves deterrence in the general sense. The volume of crime and our use of the death penalty will frighten others from committing the same crime.

Those who support this view, such as Canadian Police Associations - present as evidence - claim that indeed an "individual released on parole commits the same horrible offence again. While perhaps no one could question the effectiveness of the death penalty in the individual deterrent in such cases, the fault in the exception is that it is the exception rather than the rule. The argument assumes that all persons who commit murder are deranged. However, it is simply true. It is known that a majority of murders in Canada, and it seems elsewhere, are "crimes of passion," that is, when the victim is known, the offender knows the victim, and the act is committed for emotional (irrational) reasons, and not during the course of another crime; in these instances, it has been found much more likely that the offender does not repeat his crime.

Certainly in normal or more rational circumstances, we think that fear of consequences should prevent certain behaviour. But, most of the time, we are not talking about rational circumstances here, but about irrational, illogical circumstances. Even in cases of premeditated, deliberate murder, the perpetrator plans his crime to avoid detection and has no meaningful fear of consequences since he does not believe he will suffer any.

It would seem at least as practical and effective to imprison for ANY length of time as necessary. It is considered likely to repeat for the sole purpose of preventing this.

Admittedly, we do not really know the mechanism of deterrence and one may refute the assumptions I have made about it. But we do know that fear of deter-

rence is certainly not the only emotion that controls behaviour. The fact is, we also know (and not just believe) that the death penalty is no deterrent to others from committing murder. It is too quickly concluded that because the increase in homicide rates since 1952, the year of the last execution, is attributable to the suspension of capital punishment. We find it convenient to overlook that violent crime, as well as property offences, have increased since then too. It is just too simple to be convincing to say that the suspension of capital punishment is also responsible for this.

Recently, Dr. Patlah, a University of Montreal criminologist, came to the conclusion in a publicized study that the increase in homicide rates in Canada since 1952 cannot be attributed to the suspension of the death penalty. The result has been reached in other studies, such as in 1959 by Thorsten Sellin, an American sociologist, on the American scene. In fact, there seems to be no relation on the way or the means between the rise in murder rates and capital punishment.

Nor, frankly, is it any more logical to expect the existence of the death penalty to offer special protection to police. Dr. Patlah's figures speak for themselves:

No. of Police Killed
1961-2 1965-2 1970-3
1962-1 1966-3
1963-9 1968-5
1964-2 1969-5

As far as prison officials are concerned, Thorsten Sellin pointed out in his 1959 study that in American prisons almost all killings committed inside the prison are committed by prisoners sentenced for crimes other than homicide. There is also the fact that there has been a rarity of deaths among Canadian prison personnel, in recent years.

Unfortunately, despite the lack of evidence of the deterrent value of capital punishment and proof to the contrary, many remain unbelievers. This brings us to the other object of the death penalty - retribution. On the emotional level, it represents that true justice rests on the desire to strike back - the "eye for eye philosophy." I suppose that capital punishment is a far

FORFEITED TO CRIMINAL IMPULSE AS WELL AS THOSE WHICH MAY BE EXTRACTED IN PENALTY AFTER DUE PROCESS OF LAW EXPERIENCE OVER A TRIAL PERIOD MAY BE DESIRABLE AS A STEP TOWARDS THE FINAL DETERMINATION OF THIS ISSUE.

The moral or ethical right even of the State to deprive the citizen of life is a matter largely of religious belief and individual opinion open to debate. But in essence the death penalty belies all hope of the regeneration of the individual and negates the very principles on which we base all education, philosophy, religion, and the development of civilization itself. The story of human striving reveals some redemptive power in human beings which justifies the worth of all our efforts to improve not only the individual but the civilization itself. It is axiomatic that no human being is beyond the reach of this redemptive power.

more sophisticated expression of the "let's lynch the person who has gone bad by hanging that we have been chiding much."

It is, of course easy to understand how a person, particularly if he or someone else becomes a victim of violence, can throw aside intellectuality and act on impulse. Moreover, I am sure that there are those who feel that life imprisonment would be just as effective, but feel that the harm done to the victim and his family, the heinousness of his act and character, merit his execution. I suspect too, that even if it were shown that the use of the death penalty was socially harmful, many will continue to believe in it.

One point is, however, that the resolution of the debate on retribution - either for or against - lies in the field of moral philosophy. This is essentially because it is discussed not in terms of the effectiveness of the act administered, but in terms of the effective in protecting society, but in terms of moral rightness or wrongness. If retribution is meant to prove effective in protecting society, it must be based on the administration. We would have to assume here that any person who murders another should lose his life, and that all such persons so convicted should be executed. Regrettably, the history of the execution of criminal justice in Canada provides ample evidence that retribution has been neither efficient nor equally administered.

If the only major issue is protection of the public and the death penalty will not achieve this, what is the alternative if we abolish it totally? Beyond life imprisonment and REAL life imprisonment where public safety is first there does not seem to be any answer that I can think of at the moment. What is the appropriate penalty for murder or that matter any other crime?

Unfortunately, the emphasis on punishment as a basic method behind our criminal code with manifold objects has done little to prevent repetition of crimes. There seems little logic between crimes and their punishment. Perhaps there is something drastically wrong with our approach to crime. But that is a dangerous thing to suggest, isn't it, my friends?